

Resolution No.: 16-1244
Introduced: February 2, 2010
Adopted: February 2, 2010

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Repeal of Fire and Rescue Commission Executive Regulation 4-05AM,
Procedures for Fire and Rescue Commission Appeal Hearings

Background

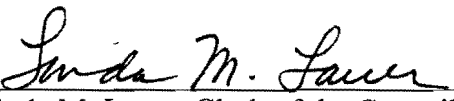
1. On December 10, 2009, the Council received a request to repeal Fire and Rescue Commission Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*, which was originally adopted under Method 2 of Section 2A-15 of the Code. Section 2A-15 requires that to repeal an adopted regulation, an issuer must use the procedure under which the regulation was adopted.
2. County Code Chapter 21 formerly provided for a Fire and Rescue Commission which was authorized, among other things, to hear appeals from volunteer firefighters who were aggrieved by certain disciplinary actions of the Fire Chief or local fire and rescue departments. The law required the Commission to establish by regulation procedures for hearing and deciding these appeals. Regulation 4-05AM established the appeal procedures.
3. Chapter 21 was later amended by Bill 38-08 to abolish the Fire and Rescue Commission and replace it with a Fire and Emergency Services Commission. The bill shifted to the Merit System Protection Board the authority to hear appeals from volunteer firefighters and required the Executive to establish procedures by regulation for the Board to hear these appeals. The Executive issued, and the Council approved, the required regulations.
4. The Executive requests repeal of Regulation 4-05AM because it is obsolete as a result of a change in law.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

Fire and Rescue Commission Executive Regulation 4-05AM, *Procedures for Fire and Rescue Commission Appeal Hearings*, is repealed.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	04-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	July 18, 2005

PROCEDURES FOR FRC APPEAL HEARINGS

Issued by: Fire and Rescue Commission

Executive Regulation No. 04-05AM

Authority: Montgomery County Code Section 21-7.(c)

Council Review: Method (2)

Supersedes: Executive Regulation 02-03AM, Temporary Executive Regulation No. 04-05T
Register Volume 22, Issue 2

Effective Date: July 18, 2005

SUMMARY: The Fire and Rescue Commission is adopting by regulation these Procedures for Appeal Hearings ("Procedures") to govern hearings of Fire and Rescue Commission appeals, in accordance with Section 21-7 of the Montgomery County Code, 1994, as amended.

DEADLINE: All comments regarding the proposed regulation must be submitted to the attention of Beth Feldman in the Office of the Fire Chief, 12th Floor, 101 Monroe Street, Rockville, MD, 20850, not later than **February 28, 2005**. Comments may also be emailed to beth.feldman@montgomerycountymd.gov

STAFF: For additional information, please call Beth Feldman, Montgomery County Fire and Rescue Service, on (240) 777-2423.

BACKGROUND: These Procedures for FRC Appeal Hearings adapt the language of the Administrative Procedures Act ("APA") to specifically correspond to procedures for Fire and Rescue Commission hearings. This regulation is authorized by Section 21-7 of the Montgomery County Code, 1994, as amended.

Sec. 1. Purpose: These Procedures are designed to provide prompt and efficient resolution of appeals over which the Commission has jurisdiction under Section 21-7 of the County Code.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	04-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

Sec. 2. Applicability. These procedures apply to an appeal filed by a volunteer firefighter or rescuer aggrieved by an adverse final action by the Fire Chief or a local fire and rescue department involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to that individual. However, the Commission must not consider an appeal of a personnel matter subject to an employee grievance procedure: (1) under a collective bargaining agreement; (2) under County personnel laws or regulations; or (3) which is otherwise subject to a complaint or appeal to the Merit System Protection Board.

Sec. 3. Definitions. The words and phrases below have the following meanings, except when otherwise indicated in these Procedures.

Appeal. A proceeding brought before the Fire and Rescue Commission under Section 21-7 of the County Code.

- b. **Appeal Document.** A written appeal from any alleged violation or action by a Local Fire and Rescue Department, or by the Fire Chief, over which the Commission has jurisdiction under Sec. 21-7 of the County Code.
- c. **Appellant.** Any person with standing who properly files an appeal document with the Fire and Rescue Commission seeking administrative relief under Section 21-7(a) of the Montgomery County Code.
- d. **Ex parte.** A proceeding taken or granted at the instance, and for the benefit of one party only, without notice to any person adversely affected.
- e. **Fire and Rescue Commission ("Commission," or "FRC").** The body established under Section 21-2 of the County Code.
- f. **Hearing.** A hearing of an appeal under Section 21-7, by the Commission, or by a hearing examiner designated by the Commission.
- g. **Hearing Authority.** The Fire and Rescue Commission ("Commission"), or a hearing examiner designated by the Commission to conduct a hearing under Section 21-7 of the County Code.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

- h. Local Fire and Rescue Department (LFRD). An entity as defined in Section 21-1 of the County Code.
- i. Person. An individual or entity, including a governmental entity.
- j. Presiding Officer. The Chair or Vice-Chair of the Fire and Rescue Commission, another public member of the Commission appointed by the Vice-Chair as temporary chair, or a hearing examiner designated by the Commission to conduct a hearing. The Presiding Officer is authorized to conduct a hearing.
- k. Responding Party. The person or body who took the action from which the appeal arises.
- l. Response Document. A written response to an appeal filed under Sec. 21-7.
- m. Standing. A person's legally protected and tangible interest at stake in an appeal.

Sec. 4. **Policy**. The Fire and Rescue Commission has jurisdiction in, and must decide each **appeal** filed by a party with **standing**. These Procedures derive from, but prevail over any conflicting provision in Chapter 2A of the County Code, and have the force of law authorized under Section 21-7(c) of the County Code.

Sec. 5. Procedure.

- I. Initiation of Hearing Process.
 - a. A person must have **standing** to participate as a party to an **appeal** under these Procedures. Any proceeding governed by these Procedures must be initiated by a person, by filing an **appeal document** in writing with the **Fire and Rescue Commission**. The **appellant** must serve the **appeal document** on the **responding party** by certified mail, return receipt requested, or by personal service. The **appellant** must file proof of service with the **Commission** or its designee, including date, time, and mode of service, within 4 business days after service. Thereafter, all parties must serve on all parties of record a copy of any other document or paper by hand-delivery, or by regular, first class mail, postage pre-paid.

1. The **appeal document** must be filed within the applicable 30 day filing time



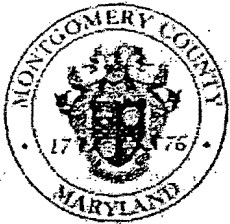
FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

period stated in Section 21-7(b) of the County Code.

2. If the **Commission** receives more than one **appeal** involving the same individual's personnel action, the **Commission** must consolidate the **appeals**.
 3. This **appeal document** must specify all questions or issues being raised and must include a description of the nature and specifics of the decision or action from which the **appeal** is being taken, with references to sections of applicable laws, regulations, or policies, if known, that are alleged to have been violated or relied upon.
 4. Unless otherwise ordered by the **Hearing Authority**, the **appeal document** must be limited to 10 pages, excluding supporting documentation. The **appellant** must provide 10 copies of the **appeal document** to the **Commission** at the time of filing. The **appeal document** must be titled "**Appeal from the Action of (the Fire Chief or name of LFRD) that Occurred on (or was Taken on) (date).**"
 5. The **appeal document** must indicate the nature of the relief requested, the name(s) and address(es) of the **responding party(ies)** alleged to have committed a violation, or to have undertaken an action that is the subject of a proceeding governed by these Procedures, a description of the alleged violation or action, and the date the violation or action allegedly took place or was undertaken. The statement may be accompanied by supporting documentation. If the decision or action from which an **appeal** has been taken was in writing, a copy of the decision or action must be attached to the **appeal** as an exhibit.
 6. Any issue not specifically raised by the **appellant** in the **appeal document** is waived.
- b. The **Commission** has authorized its Staff Director or designee to receive the filing of an **appeal**, and all other filings, under these Procedures. Upon receiving an **appeal** or other filing, the Staff Director or designee must note directly on the document filed the date and time that it was received, and provide 1 copy of the filed document to the **Presiding Officer** and each Commissioner within 5 business days after receiving the document.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

- c. The party filing an **appeal document** is responsible for obtaining a date stamp on the original document the party is filing, to accurately indicate when the party filed the document with the **Commission's Staff Director** or designee.
- d. Unless otherwise ordered by the **Hearing Authority**, a **responding party** must file a **response document** addressing the issue(s) raised in an **appeal document** not more than 21 days after being served by an **appellant** with an **appeal document**.
 1. The **response document** must include a description of the nature and specifics of any defense(s) to each allegation, with references to sections of applicable laws, regulations, or policies, if known, that are relied upon.
 2. Any supporting documentation upon which the **responding party** relies must accompany the **response document**, unless the **Commission** orders otherwise.
 3. Unless otherwise ordered by the **Hearing Authority**, the **response document** must be limited to 10 pages, excluding supporting documentation. The **responding party** must provide 10 copies of the **response document** to the **Commission** at the time of filing.
- e. Unless the **Commission** orders an evidentiary hearing because it has determined that it must receive testimony or other additional evidence to resolve a matter on its merits, all **appeals** to the **Commission** must be based on the record. The record must consist of the **appeal document**, **response document(s)** filed by the **responding parties**, if any, and any properly filed documents and transcripts of testimony filed or compiled in accordance with these Procedures, or under orders or directives of the **Commission** while the **appeal** is pending.
- f. In accordance with Section 5, i.e., the **Commission** may, in its sole discretion, permit the introduction of relevant testimony, documents, and other evidence, upon determining an evidentiary hearing is needed to resolve the matter.
- g. When the **Hearing Authority** is not in session, its **Presiding Officer** may rule on a motion to continue, to extend time, or to increase the number of pages permitted in an **appeal document**, or in a **response document**.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	04-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

- h. Unless the Hearing Authority otherwise orders, a **hearing** must be held within 45 days after the time the **responding party** is required to file a response.
- II. Notice of Hearing.
 - a. The **Commission** must provide reasonable notice regarding any **hearing**. This notice must be provided to all parties not less than 30 calendar days before the **hearing**, except as provided in Section 5.II.b., or as otherwise ordered by the **Commission**.
 - b. Notwithstanding Section 5.II.a., the **Commission** may schedule a **hearing** on a motion, upon reasonable notice given to all parties not less than 15 days before the **hearing**. Furthermore, the **Commission** may decide a preliminary matter or a non-dispositive motion, or a motion for reconsideration, or to alter or amend its decision without a **hearing**. With agreement of all parties, or as otherwise ordered by the **Hearing Authority**, a **hearing** may be held on less notice than stated in Section 5.II.b., or in Section 5.II.a. This agreement of the parties, or order of the **Hearing Authority**, must be in writing or placed on the record. A motion to dismiss, or other dispositive motion, may be heard either at the **hearing** on the merits; or at a time before or after a **hearing** on the merits, in the sole discretion of the **Commission**.
 - 1. The **Hearing Authority** must provide written notice of a **hearing** to the **appellant** and **responding party**: by regular, first class mail; or by personal service at the address(es) indicated in the **appeal** or **response document**; or as otherwise determined in writing by the **Commission**.
 - 2. If the **Commission** staff is unable to serve a party, as noted in Section 5.II.b.1., after making diligent and reasonable efforts to locate the party, the staff member must file in the record an affidavit of attempts to make service. If the **Commission** is satisfied with the efforts made to serve Notice of a **hearing** on a party, it may direct alternative means to actually serve the party, or proceed to hear the matter.
 - 3. The written notice of a **hearing** must contain the following information:
 - A. a copy of the **appeal document**;



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

- B. the time, place, and date of the hearing;
- C. that the parties may be represented by counsel, or may represent themselves;
- D. if the **Commission** orders an evidentiary hearing, that the parties may present witnesses, cross-examine witnesses, and present supporting documentation; and
- E. that procedural requirements are established by these Procedures, and in County Code Section 21-7.

4. A request for a continuance of a hearing must be made by filing a written request not less than 5 business days before the date of the hearing. A request for a continuance must set forth the reason(s) for the requested continuance, and must specify whether any or all of the parties to the matter have consented to the request. When the **Hearing Authority** is not in session, a request for continuance may be ruled upon by the **Presiding Officer**.

III. Hearings.

- a. Time and Place/Referral to **Hearing Examiner**. A hearing on a contested matter, including a hearing on the merits, must be held at the time and place designated in the notice(s), except when continued to another date. Hearings must be open to the public, except where otherwise ordered by the **Commission**, or as provided by law. Unless the **Commission** expressly orders otherwise, all matters must be heard by the **Commission** on the basis of the written record, as noted in Section 5.1.e.

The **Commission**, in its sole discretion, may hold a hearing, or may refer a matter to a hearing examiner, to take evidence and determine factual issues. If the **Commission** finds at any time before a decision on the merits that a matter cannot be resolved without a determination of factual issues, the **Commission** must notify the parties and decide, in writing or on the record:

- 1. whether, or to what extent, it will permit the parties to present witnesses or other evidence not otherwise in the record; and



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

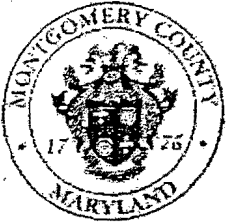
2. whether it will refer the matter to a **hearing** examiner for factual findings or recommendations.

b. Official Record.

The **Commission** must prepare, maintain, and supervise the custody of an official record in each case. The record must include any permitted testimony and documentary evidence, if any are submitted during the **hearing** or at other times the record is open to receive evidence and to develop a verbatim transcript. Any party may arrange for a verbatim record and transcript of the **hearing** to be made at that party's expense. Relevant documentary evidence may be received in the form of: copies; excerpts of documents that satisfy the **Hearing Authority** that they are accurate portions of larger documents or transcripts; photographic reproductions; or documents incorporated by reference from other documents. The **Hearing Authority** must make the official record available for inspection to all parties and their counsel before any **hearing**.

c. Ex parte Communication.

1. Section 5.III.c. **Ex parte** Communication applies to any **ex parte** communication, written or oral, received by a member of the **Hearing Authority** if:
 - A. the communication relates to an **appeal** before the **Commission**;
 - B. all appellate rights regarding the contested matter have not been exhausted; and
 - C. the **Commission** is required by law to make a decision on the matter based on the record, or based on any permitted relevant testimony or documentary evidence before it.
2. Section 5.III.c. does not apply to:
 - A. legal or technical advice rendered by government agency staff or an attorney for the County at the request of the **Commission**;



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject

PROCEDURES FOR FRC APPEAL HEARINGS

Number

O4-05AM

Originating Department

MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Effective Date

- B. any communication about the status or procedure of a pending matter;
or
 - C. any communication between members of the **Commission**, or between members of the **Commission** and any attorney for the County or **MCFRS** staff member assigned to the **Commission**.
3. If a member of the **Hearing Authority** receives an oral *ex parte* communication, that member must reduce the substance of the communication to writing within a reasonable time after receipt of the communication. A member of the **Hearing Authority** must provide any written or oral *ex parte* communication to the entire **Hearing Authority**.
4. If a final administrative decision has not been made before receipt of the *ex parte* communication, the **Commission** must send a written notice to all parties that discloses the contents of the communication, and states whether the **Commission** will consider the communication as a basis for its decision under Section 5.III.c.5.
5. The **Commission** must include the *ex parte* communication in the record and may:
- A. consider the communication as a basis for its decision, after giving all parties an opportunity to respond to the communication; or
 - B. decide the matter, while expressly finding that it has not considered the communication as a basis for its decision.
6. The substance of an *ex parte* communication received after a final administrative decision has been made, and before appellate rights have been exhausted, must be maintained in the case file, and must be treated in accordance with all other provisions of Section 5.III.c.
7. In the event of a remand to the **Commission** by a higher appellate authority, the **Commission** may seek additional evidence, subject to the remanding authority's instructions, provided that the evidence is included as part of the record and the parties are given notice and an opportunity to respond.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject

PROCEDURES FOR FRC APPEAL HEARINGS

Number

O4-05AM

Originating Department

MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Effective Date

d. Subpoena Power and Depositions.

1. The **Commission**, through its Chair, Vice-Chair, another public member of the **Commission** appointed by its Vice-Chair as temporary chair, or a **hearing examiner**, may issue subpoenas and require depositions under Section 21-7(d) and (e) of the County Code.
2. The **Commission** may compel the attendance of witnesses and require that they produce books, papers, documents, and other materials relevant to any case under consideration.
3. Subpoenas may be served by certified mail, by private process server designated by the **Commission**, or by anyone who could lawfully serve a subpoena in a judicial proceeding of a civil nature.
4. A **person** has the right to inspect and copy a public record, in accordance with, and subject to, the Maryland Public Information Act.

e. Burden of Going Forward with the Evidence and Burden of Persuasion. The **appellant** has the burden of going forward with the production of evidence, and the burden of persuasion, at an evidentiary **hearing** before the **Hearing Authority**. This evidence or argument must be competent, material, and relevant to all matters at issue and the relief requested.

1. Evidence. When conducting an evidentiary **hearing**, the **Hearing Authority** may admit and give appropriate weight to evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence that appears to the **Hearing Authority** to be reliable in nature. The **Hearing Authority** must give effect to the rules of privilege and confidentiality recognized by law or regulation, and may exclude incompetent, unreliable, irrelevant, or unduly repetitious evidence, or direct a party to produce evidence at the **Hearing Authority's** request.
2. The **Hearing Authority** may take official notice of commonly known facts, facts within its particular realm of administrative expertise, and documents or matters of public record. Parties must be notified of matter and material so noticed



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject PROCEDURES FOR FRC APPEAL HEARINGS	Number O4-05AM
Originating Department MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	Effective Date

while the record in the case is open, and must be provided an opportunity to argue that the **Hearing Authority** should not take notice of those facts.

f. Testimony of Witnesses at Hearing.

1. All witnesses must testify under oath. A witness under oath who intentionally falsifies material, or who willfully and falsely testifies in a **hearing**, is subject to the penalties of perjury under State law.
2. Every party has the right of reasonable cross-examination of witnesses who testify, and has the right, on request, to submit rebuttal evidence. Repetitious questions and examination on irrelevant matters must not be permitted. Cross-examination must be subject to reasonable regulation by the **Hearing Authority**, which may require the designation of specific persons to conduct cross-examination on behalf of other individuals.

- g. Right to Counsel. In any case governed by these Procedures, the parties may represent themselves, or may be represented by legal counsel admitted to practice in the State of Maryland. Notwithstanding any other provisions in these Procedures, a corporation must be represented by an attorney. Where a party is represented by counsel, the appearance of counsel must be entered in the case, and the party or its counsel must expeditiously notify the **Commission** in writing or on the record after retaining counsel. A party or its counsel must also notify all other parties of record simultaneously with the notice of appearance of counsel to the **Commission**.

- h. Powers of the **Hearing Authority**. In addition to any other power granted by these Procedures, and subject to those powers noted below that are held by only the **Commission**, the **Hearing Authority** may:

1. administer oaths and affirmations;
2. grant or deny requests for subpoenas, or issue subpoenas on its own initiative;
3. call independent witnesses or seek additional evidence to be made part of the record, as justice may require;
4. rule on motions to quash subpoenas;



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

5. rule upon motions and offers of proof, and receive relevant and probative evidence; exclude incompetent, irrelevant, immaterial, or repetitious evidence; and give effect to the rules of privilege or confidentiality recognized by law or regulation;
6. regulate the course of a **hearing** and, in its discretion, allow the record in a **hearing** to remain open for a designated period of time;
7. hold conferences for simplification of the issues;
8. dispose of procedural requests or similar matters, including motions for continuance; amend a pre-hearing statement; and order **hearings** reopened, order cases consolidated, or grant rehearings;
9. call, examine, and cross-examine witnesses, and obtain and introduce into the record documentary or other evidence;
10. request the parties at any time while a matter is pending, including during a **hearing**, to state their respective positions concerning any issue in the case or theory in its support;
11. take any other action authorized by these Procedures or necessary to a fair disposition of the case;
12. accept evidence by stipulation of facts, which may be introduced at any time before the decision of the **Hearing Authority**;
13. schedule, recess, suspend, or continue **hearings** to a specific time and date, with notification to all parties;
14. on its own motion, and at the request of an affected party, order witnesses other than a party to be excluded from the **hearing** room until called to testify;
15. order that statements of witnesses who are beyond the **Commission's** jurisdiction, or who for sufficient reason are unavailable to testify, be taken by written interrogatories answered under oath, or deposition (including telephone



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

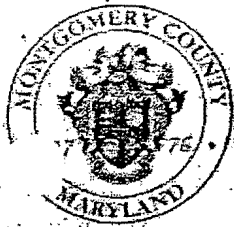
Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

depositions) made under oath. The original of any of these interrogatories, their answers, or deposition transcripts, must be filed in the case file of the proceedings. The terms "interrogatories" and "depositions," unless otherwise ordered by the **Commission**, have the same meanings and follow the same procedures as set forth in the Maryland Rules of Civil Procedure, applicable to Circuit Court proceedings, as amended from time to time;

16. (only the **Commission**) rule on the request for witness reimbursement of expenses actually incurred because of that witness's required presence at a hearing; or, if the witness is a County employee, rule on a request to extend appropriate leave to the witness; and
17. (only the **Commission**) upon motion, permit additional parties with standing to intervene or participate in the proceedings, as justice may require.

i. Hearing Conduct and Procedure.

1. Unless otherwise provided by law:
 - A. A quorum of the **Commission** must be present to conduct a hearing. A majority of the members of the **Commission** constitutes a quorum. The quorum requirements do not apply to hearings conducted by a hearing examiner.
 - B. The **Presiding Officer** (except a hearing examiner appointed by the **Commission**) must be a voting member, and is counted toward establishing a quorum.
 - C. A ruling of the **Presiding Officer** stands, including without limitation, those with respect to objections and to admission or exclusion of evidence, documents or exhibits, unless overruled by a majority vote of the members of the **Commission** present and participating.
 - D. The **Commission's** Chair or, in his/her absence, the Vice-Chair, or another public member of the Commission appointed by the Vice-Chair as temporary chair, or a hearing examiner designated by the **Commission**, must conduct any hearing involving the appeal, and may



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject

PROCEDURES FOR FRC APPEAL HEARINGS

Number

O4-05AM

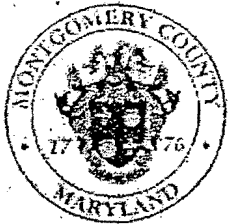
Originating Department

MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Effective Date

issue subpoenas and permit depositions.

- E. A member of the **Hearing Authority** is subject to disqualification for conflict of interest, and suggestions for disqualification of any member may be made on petition of any party, or by any member of the **Hearing Authority**. A ruling on any such disqualification may be made by a majority of a **Commission** quorum. Conflict of interest matters are also governed by the County Ethics Commission under County Law, including Section 19A-15(b) of the County Code. If a conflict occurs between a decision by the **Commission** and the Ethics Commission, the decision of the Ethics Commission prevails.
2. The **Presiding Officer** must preside at **hearings** and has full authority at all times to maintain orderly procedure and to restrict the **hearing** to relevant and material facts.
 3. All exhibits accepted must be marked and held in the **hearing** file. Exhibits whose admission is rejected must either be returned to the offering party, or retained in the file, with appropriate notations reflecting that the material was rejected as an exhibit.
 4. Motions, petitions, and objections made during the course of a **hearing** must be ruled on as received, or as soon thereafter as is practicable.
 5. Where the **Commission** orders an evidentiary **hearing** under Section 5. III.a., the ordinary, but not mandatory, order of procedure for the conduct of the **hearing** and the presentation of evidence is:
 - A. disposition of all outstanding preliminary motions and preliminary matters;
 - B. opening statement of parties;
 - C. presentation of factual case of the **appellant**; cross-examination of the **appellant's** witnesses;
 - D. presentation of factual case of the **responding party**;



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

cross-examination of the **responding party's** witnesses;

- E. rebuttal evidence of the **appellant**; cross-examination of the **appellant's** witnesses;
- F. surrebuttal evidence of the **responding party**; cross-examination of the **responding party's** witnesses; and
- G. closing arguments.

j. Sanctions. The **Commission** may impose sanctions against parties and witnesses for failure to abide by the provisions of these Procedures, or for causing unexcused delays or obstructions to the pre-hearing and **hearing** process. These sanctions may include, but are not limited to suspension or continuance of scheduled **hearings**, dismissals of **appeals**, denial of admission of documents and exhibits, and admission of matters as adverse to a party.

1. In addition to any of these sanctions, the **Commission** may assess against any offending party the full cost of verbatim recording and transcription of any **hearing** that was delayed or obstructed by that party.
2. The **Commission** may also assess against the offending party the cost of re-advertisement, or re-notice, if this notification is either required by law or is necessary, in the discretion of the **Commission**, to give adequate notice to interested or affected parties.

IV. Emergency Hearings.

If the ordinary processing of any **appeal** may cause injury to any party due to time constraints, the **Commission** may, for good cause shown by any affected party, or on its own motion, grant an emergency **hearing**. When the **Commission** orders an emergency **hearing**, it may suspend or alter any provision of these Procedures necessary to avert that undue injury. However, in those cases, the **Commission** must notify all parties of the operation of this section and make every reasonable effort to provide substantive due process of law to all parties.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	04-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

V. Decisions.

- a. Content. All decisions of the **Hearing Authority** granting relief requested by **appellant**, except rulings on preliminary matters or on non-dispositive motions or objections, must be in writing. Except for preliminary matters or non-dispositive motions, or objections, each decision must be based on the record, and must contain findings of fact, conclusions of law, and an appropriate decision and order. However, any decision stipulated or consented to by the parties need only be reflected by an appropriate written order or consent agreement.
- b. Evidence Required. Where an evidentiary **hearing** is held, all decisions of the **Hearing Authority** must be based on and supported by a preponderance of the evidence of record. A claim of fraud or fraudulent action must be supported by clear and convincing evidence.
- c. Voting Requirements. Any dispositive decision rendered in conformity with the provisions of these Procedures must have the concurrence of a majority of a quorum of the voting members of the **Hearing Authority**, unless a greater number of votes are required by law.
 1. Members of the **Commission** who were absent during a **hearing** may vote on a matter, if they provide written certification that they have read the transcripts and reviewed the evidence of record.
 2. Failure to achieve the necessary affirmative votes will act as a denial of the relief requested by the **appellant**, by operation of law. No written opinion in this instance will be required. However, individual members of the **Commission** may file written reasons supporting their respective positions.
- d. Time Requirements for Decisions. All decisions of the **Hearing Authority** should be rendered within 45 calendar days after the closing of the record in the case. However, the **Commission**, on its own motion, or the **Presiding Officer**, may extend the time for decisions for additional periods, with written notification to all parties.

Notification of Decision. The **Commission** must send a decision of the **Hearing Authority** simultaneously to all parties of record and their counsel. The decision is



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject	Number
PROCEDURES FOR FRC APPEAL HEARINGS	O4-05AM
Originating Department	Effective Date
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE	

deemed received by a party 3 business days after the **Commission** mails it.

- f. Request for Rehearing or for Reconsideration, or to Alter or Amend. A request for rehearing or reconsideration, or to alter or amend, must be filed within 21 calendar days after the **Hearing Authority** issues a final decision. After that time, a request for a rehearing or for reconsideration, or to alter or amend, may be approved only because of fraud, mistake, or irregularity. If a request is timely filed, the **Hearing Authority** may exercise revisory power and control over its decision. For these purposes, the terms "fraud, mistake, or irregularity" have the same meaning that those terms have under Maryland Rules of Procedure, Rule 2-535, as amended from time to time.
1. A request for rehearing or for reconsideration, or to alter or amend, must be made in writing, and must include the supporting reasons for the request. Copies must be served on all parties of record.
 2. Any decision on a request for rehearing or for reconsideration, or to alter or amend that is not granted within 10 business days after the request is received is denied.
 3. Any request for rehearing or for reconsideration, or to alter or amend stays the time for filing any administrative appeal for judicial review until the request is denied; or if the request is granted, until a subsequent decision is rendered.
 4. A request for rehearing or for reconsideration, or to alter or amend does not stay the operation of any decision or order, unless the **Commission** so orders.
- g. Informal Disposition. If appropriate to the nature of the proceedings, and permitted by the governing laws, and with the **Commission's** approval, an informal disposition may be made of any contested case or issue by stipulation, agreed settlement, consent order, or default.
- h. Whenever the provisions of these Appeal Procedures conflict with County Code Sec. 21-7, the provisions of Sec. 21-7 prevail.

Sec. 6. Severability. If a court of final appeal holds that any part of this regulation is invalid, that ruling does not affect the validity of other parts of the regulation.



FIRE AND RESCUE COMMISSION EXECUTIVE REGULATION

12th Floor, 101 Monroe Street • Rockville, Maryland 20850

Subject

PROCEDURES FOR FRC APPEAL HEARINGS

Number

04-05AM

Originating Department

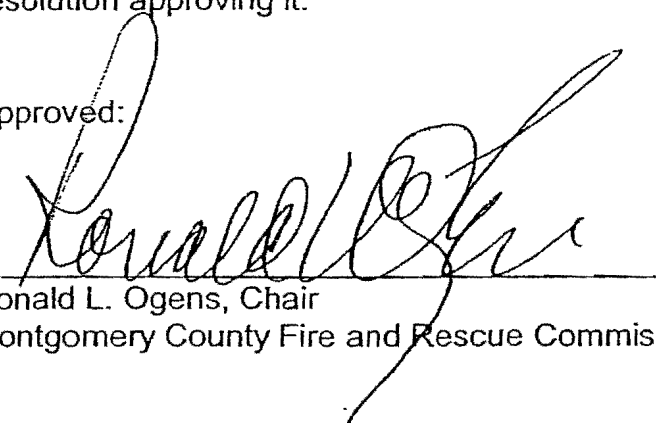
MONTGOMERY COUNTY FIRE AND RESCUE SERVICE

Effective Date

Sec. 7. **Enforcement.** The Fire Chief is the enforcement authority for all policies and regulations of the Montgomery County Fire and Rescue Service.

Sec. 8. **Effective Date.** This regulation is effective on the date the County Council adopts a resolution approving it.

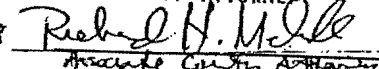
Approved:


Ronald L. Ogens, Chair
Montgomery County Fire and Rescue Commission

7/8/05
Date

APPROVED AS TO FORM AND LEGALITY:

OFFICE OF COUNTY ATTORNEY


DATE 6/20/05
Montgomery County Attorney

Appeals procedure amended 6-27-05 bf wp